IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 793 of 1996

with

MISC. CRIMINAL APPLICATION No 11927 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRAPRASAD CHOTHMAL AGRAWAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 793 of 1996
   MS RV ACHARYA for Appellant
   MR BM MANGUKIYA for Appellant
   MR KC SHAH, APP for Respondent
2. Misc. Criminal Application No.11927 of 2004
   MR BM MANGUKIYA for Petitioner
   MR KC SHAH, APP for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 27/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Criminal Appeal No.793 of 1996, filed under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against judgment dated August 27, 1996 rendered by the learned Additional Sessions Judge, Panchmahals at Godhra in Sessions Case No.230 of 1995 by which the appellant is convicted of the offences punishable under Sections 302 and 201 I.P.C. and sentenced to suffer R.I. for life for commission of offence punishable under Section 302 as well as R.I. for one year for commission of offence punishable under Section 201 I.P.C.. It may be mentioned that the learned Judge has directed that the substantive sentences shall run concurrently.

2. Miscellaneous Criminal Application No.11927 of 2004 is filed under Section 389 of the Code of Criminal Procedure, 1973 by which the applicant has prayed to recall Dr. Chimanbhai Bijiyabhai Charel, who was examined by the prosecution as p.w.1 at Exh.16, and re-examine him to enable the court to have clear medical evidence on record before concluding whether the death of the deceased was homicidal or suicidal.

3. The facts emerging from the record of the case are as under:

3.1 Deceased Rekha was originally resident of Lohamandi of Indore City, Madhya Pradesh. Name of her mother is Prembai. Her marriage with the appellant was solemnised on April 27, 1995 at village Fatehpura. After marriage, she was residing at village Fatehpura with her husband, mother-in-law, father-in-law and Kamlesh, who is younger brother of the appellant. It may be stated that the appellant is running a grocery shop at village Ukhareli, Taluka Santrampur. On May 1, 1995, the deceased went to her parental house. On May 8, 1995, the appellant went to bring her back to her marital home and, therefore, Prembai sent her with the appellant.

3.2 The incident in question took place on July 11, 1995. On July 11, 1995, the appellant lodged an

information with P.S.I. Mr. P.F. Gohil who was then in charge of Fatehpura Police Station, mentioning inter-alia that 15 days prior to the date of incident, the deceased talked to the appellant to reside separately from her father-in-law, mother-in-law and brother-in-law but the appellant did not agree to the said proposal whereupon the deceased informed him that she would go to her parental house and made preparations for going to her parental house but she was informed by the appellant that yesterday a letter from her uncle Mohanlal was received mentioning that he was to go to village Fatehpura in the first week of July and that she should go to her parental house in the company of her uncle. It was stated by the appellant in the said information that the suggestion made by him was accepted by the deceased without reservations and the deceased took her evening meals at about 10.00 p.m. The appellant averred that thereafter he, in the company of the deceased, went to the 'vada' situated on the rear of his house for the purpose of sleeping whereas his parents, brother and sister were sleeping in the front portion of his house. The claim made by the appellant in the said information was that the deceased got up at about 5.00 a.m. and woke him whereas his parents, who were already awaken, were brushing their teeth on the 'otla' of the house and when he got up at about 5.30 a.m., he noticed that the deceased was preparing tiffin for him by kneading flour. It was also mentioned by him in his information that he thereafter visited toilet and came out at about 6.45 a.m. and found that from the bathroom situated near the water tank, smoke was coming out. According to him, he found that the bathroom was closed from inside and he could see through the grill that his wife Rekha was lying on the floor of the bathroom in a burnt condition and her clothes were burning. It was mentioned by the appellant in the information that thereupon, he raised shouts as a result of which, his parents and his brother rushed near the bathroom and after opening door of the bathroom, found that the deceased had received burn injuries all over her body and was dead. It was further claimed by the appellant that the burning clothes were extinguished from which kerosene was smelling and after bringing out her dead body from the bathroom, Kishan Chothmal who is another brother of the appellant was informed whereas relatives of his wife Rekha were informed on telephone. It was mentioned by the appellant in the information that the deceased committed suicide as he did not agree to her suggestion to reside separate from his parents and brother. The information mentioning above facts was lodged by the appellant at 10.45 a.m. with P.S.I. Pramodsinh F. Gohil who was then in charge of Fatehpura

Police Station. The information lodged by the appellant was registered as A.D. No.6 of 1995 under Section 174 of the Code of Criminal Procedure, 1973 and S.D.P.O. Lunawada was informed about the same by wireless message. Thereafter, Mr. Gohil went to the place of incident and held inquest on the dead body of the deceased. Necessary arrangement was made by him to send the dead body of the deceased for post-mortem examination. Mr. Gohil also drew panchnama of the place of incident and seized certain articles for investigation from the spot. He also recorded statements of father-in-law, mother-in-law, sister-in-law and brother-in-law of the deceased. Meanwhile, S.D.P.O. Mr. S.K. Dave arrived at the place of incident and, therefore, further investigation undertaken, pursuant to information given by the appellant, was handed over to Mr. Dave. Mr. Dave recorded statements of those persons who were found to be conversant with the facts of the case.

3.3 Meanwhile, Mohanlal, who is uncle of deceased Rekhaben, received a telephonic call informing him that the deceased committed suicide. Therefore, Prembai, in the company of Mohanlal and others, came to Fatehpura. After coming to Fatehpura, Prembai and others learnt that the dead body was sent for post-mortem examination and, therefore, went to hospital. At the hospital, they learnt that the deceased was strangulated.

3.4 Autopsy on the dead body of the deceased was conducted by a panel of three doctors comprising Dr. C.B. Charel, Dr. S.M. Palas and Dr. M.C. Bhedi. After conducting post-mortem examination, the three medical officers issued certificate indicating cause of death of the deceased to be Asphyxia due to strangulation. The statement of mother of the deceased recorded by Mr. Dave indicated that the deceased was subjected to cruelty by the appellant and his relatives. The cause of death also made it clear that the appellant and others had caused disappearance of evidence of murder of the deceased. Under the circumstances, S.D.P.O. Mr. Dave himself became complainant and lodged complaint against the appellant and his relatives for commission of offences punishable under Sections 302, 201, 498-A read with 114 I.P.C. While in custody, the appellant made disclosure statement pursuant to which, stick, rope, plastic mug etc. were discovered from the 'vada' of the house. On completion of investigation, the appellant and four others were chargesheeted in the court of learned Judicial Magistrate First Class, Santrampur for commission of offences punishable under Sections 498 read with 34 I.P.C., 302 read with 34 I.P.C. and 201 read

with 34 I.P.C. As the offence punishable under Section 302 is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Panchmahals at Godhra for trial where it was numbered as Sessions Case No.230 of 1995.

4. The learned Additional Sessions Judge, Panchmahals at Godhra, to whom the case was made over for trial, framed necessary charge against the accused at Exh.4. It was read over and explained to the accused who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Dr. Chimanbhai Bijiyabhai Charel as p.w.1 at Exh.16, (2) Prembai Subhasinh as p.w.2 at Exh.18, (3) Mohanlal Dorilal as p.w.3 at Exh.21, (4) Taradevi Kishanlal as p.w.4 at Exh.25, (5) Lalchand Devchand as p.w.5 at Exh.26, (6) Aiyubbhai Rasoolbhai Ghanchi as p.w.6 at Exh.30, (7) Dhirajlal Gulabchand as p.w.7 at Exh.31, (8) Kailasben Udesinh as p.w.8 at Exh.34, (9) Pramodsinh Fatesinh Gohil as p.w.9 at Exh.35 and (10) Sureshkumar Kantilal Dave as p.w.10 at Exh.46. to prove its case against the accused. The prosecution also produced documentary evidence such as post-mortem notes of the deceased at Exh.17, letter addressed by the deceased, letter addressed by witness Mohanlal to deceased Rekha, inquest report at Exh.27, panchnama of place of occurrence at Exh.28, panchnama indicating seizure of clothes of the deceased at Exh.29, panchnama prepared at the time of arrest of the accused at Exh.32, panchnama indicating discovery of stick, rope, plastic mug etc. pursuant to disclosure statement made by the appellant at Exh.33, complaint lodged by the appellant disclosing accidental death of the deceased at Exh.36, map of the place of incident at Exh.45, complaint lodged by S.D.P.O. Mr. Dave against the accused at Exh.41 etc. in support of its case against the accused.

5. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the accused the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements, as required by Section 313 of the Code of Criminal Procedure, 1973. In their further statements, the case of all the accused was that deceased Rekha had committed suicide but hue and cry was raised by people of village Fatehpura as well as Advocate Upadhyay, who was a politician and, therefore, false case was filed by the police against them and that they were falsely involved in the case. However, no evidence was adduced by any of the accused to substantiate this defence.

6. After hearing the parties, the learned Judge

closely scrutinised the evidence tendered by Dr. Charel as well as contents of post-mortem notes produced on the record of the case and concluded that the deceased had not committed suicide but she was done to death by strangulation. The learned Judge thereafter considered the circumstances appearing from the evidence on record namely that, (1) false information was conveyed by the appellant to the police that the deceased had committed suicide; (2) the deceased was in the company of the appellant and the appellant had every opportunity to commit her murder; (3) the contents of panchnama of place of incident indicated that it was not possible to close the bathroom from inside and petticoat and green-coloured sari kept on stand were found to be intact and (4) the testimony of mother and uncle of the deceased read with contents of letter at Exh.42 established that the deceased was subjected to cruelty by the appellant. After noticing abovereferredto circumstances, the learned Judge held that they were conclusive in nature and established that in all human probability, the murder of the deceased was committed by the appellant but no reliable evidence was led by the prosecution against the other accused. The learned Judge also found that after committing murder of the deceased, her dead body was set on fire by the appellant with a view to causing disappearance of evidence of murder and, therefore, the appellant was guilty under Section 201 I.P.C. In view of abovereferredto conclusions, the learned Judge has convicted the appellant under Sections 302 and 201 I.P.C. and imposed sentences, referred to earlier, by judgment dated August 27, 1996 giving rise to instant appeal.

7. Mr. B.M. Mangukiya, learned counsel of the appellant contended that post-mortem report of the deceased is signed by two doctors, though autopsy on the dead body of the deceased was performed by a panel of three doctors and, therefore, cause of death of the deceased, as mentioned in the post-mortem notes to be Asphyxia due to strangulation, should not be accepted by the court. It was argued that inquest on the dead body of the deceased was held in the presence of panchas wherein a specific opinion is expressed to the effect that death of the deceased was due to burns and as the opinion about the death of the deceased expressed in the inquest report differs from that expressed in the post-mortem notes, the post-mortem notes should not be relied upon for the purpose of coming to the conclusion that the deceased died due to strangulation. According to the learned counsel of the appellant, though the dead body of the deceased was received for post-mortem examination on July 11, 1995 at 3.15 p.m., the autopsy on

the dead body was performed on July 12, 1995 between 8.30 a.m. and 11.30 a.m. and as delay in performing autopsy is not explained at all, the post-mortem notes should not be given undue importance while ascertaining the fact whether the deceased died a homicidal death or a suicidal death. The learned counsel maintained that fracture of greater horn of thyroid cartilage would not necessarily show that there was Asphyxia due to strangulation and, therefore, the learned Judge of the Trial Court should have held that it was not proved by the prosecution that the deceased died because of Asphyxia due to strangulation. The learned counsel for the appellant extensively quoted passages appearing on pages 310, 311, 313, 314, 315, 316, 317, 319 and 333 from MODI's MEDICAL JURISPRUDENCE AND TOXICOLOGY TWENTY-SECOND EDITION and argued that Second degree burns comprise acute inflammation and blisters produced by prolonged application of a flame etc. whereas Third degree burns refers to the destruction of the cuticle and part of the true skin which appears horny and dark, owing to it having been charred and shrivelled whereas persons removed from houses destroyed by fire are often found dead from suffocation due to the inhalation of smoke, carbon monoxide and other irrespirable gases and as the heat received by the deceased was very great, cracks and fissures resembling incised or lacerated wounds, several inches long had occurred in the skin and tissues which would not show that incised wounds and lacerated wounds were post-mortem and, therefore, the post-mortem report should be ignored from consideration. It was maintained that if the body, of a victim dying of thermal burns, continues to remain exposed to flame and intense heat, some or all of the ante-mortem burns covering the body of such a victim, may exhibit the appearance of post-mortem burns as a result of which, the opinion expressed in the post-mortem notes of the deceased to the effect that the burns were post-mortem should not be relied upon by this court while deciding the question whether the deceased died a homicidal or suicidal death. It was asserted by the learned counsel of the appellant that the results found during the post-mortem examination established that the deceased must have been alive during the fire and, therefore, the learned Judge of the Trial Court was not justified in concluding that the burn injuries noticed on the deceased were post-mortem in nature. It was emphasised that in the case of a burn caused during life, a line of redness involving the whole true skin is formed around the injured part and as there was a line of redness involved in the whole true skin, it should have been held that the burn injuries were not post-mortem. It was pleaded that bruises or contusions are injuries

which are caused by a blow from a blunt weapon, such as a club, whip, iron bar, stone, ball, fingers, fist etc. or by a fall, or by crushing or compression and these are accompanied by painful swelling and crushing or tearing of the subcutaneous tissues without solution of continuity of the skin and as bruises or contusions could not have been detected on the dead body of the deceased who had sustained 2nd degree and 3rd degree burns, it should have been held that homicidal death of the deceased was not proved by the prosecution. The learned counsel of the appellant maintained that in the inquest report, it is mentioned that the face of the deceased was black and, therefore, doctors who had performed autopsy on the dead body of the deceased should have tried to find out whether there were carbon particles in the trachea or not and as proper tests were not conducted before expressing opinion to the effect that the deceased died due to strangulation, the post-mortem notes should be ignored from consideration. The learned counsel argued that testimony of Prembai, which is sought to be relied upon by the prosecution for proving so-called extra-judicial confession made by the appellant before her and another witness, is full of inconsistencies as well as contradictions and, therefore, the learned Judge of the Trial Court was not justified in placing reliance on the testimony of the said witness while determining the guilt or otherwise of the appellant. It was pleaded that so also the evidence tendered by witness Mohanlal, witness Taradevi and witness Lalchand does not support the prosecution case at all and, therefore, the conviction of the appellant cannot be regarded as a legal one. It was stressed that as several relevant aspects of the matter were not brought on record during the course of cross-examination of the doctor who had deposed before the court, Miscellaneous Criminal Application should be allowed for the reasons stated therein and after re-calling him, his further evidence should be recorded to find out correct cause of death of the deceased. It was asserted that the learned Judge of the Trial Court has failed to appreciate the evidence on record in its true perspective and, therefore, the appeal should be allowed.

8. Mr. K.C. Shah, learned counsel of the State Government contended that though post-mortem note is signed by two doctors, the certificate indicating cause of death of the deceased, which was supplied to the appellant alongwith other papers while submitting report under Section 173 of the Code of Criminal Procedure, 1973, indicates that the same is signed by three doctors and, therefore, it is wrong to contend that the opinion

expressed in the post-mortem report about the cause of death of the deceased should not be taken into consideration by the court. It was argued that it is not the case of the defence that the third doctor who has not signed the post-mortem note had expressed any differing opinion about the cause of death of the deceased at all and, therefore, non-signing of post-mortem notes by the third doctor is of no consequence. It was submitted that after noticing several features, which would normally be present in a case of death by strangulation, Dr, Chimanbhai Charel, examined at Exh.16, has expressed a firm opinion that death of the deceased was because of Asphyxia resulting from strangulation and, therefore, cause of death of the deceased, as mentioned in the post-mortem notes, should be accepted by the court. It was argued that more than sufficient opportunity was given to the defence to cross-examine Dr. Charel to enable the defence to bring on record relevant facts relating to cause of death of the deceased and, therefore, Miscellaneous Criminal Application, which is filed to fill up lacuna in the case of defence, should not be accepted by the court. The learned counsel for the State Government asserted that the passages which are sought to be relied upon from the book of MODI'S MEDICAL JURISPRUDENCE AND TOXICOLOGY were neither shown nor put to Dr. Charel during his cross-examination and therefore, the same should not be taken into consideration by this court for the purpose of discrediting him and the case of the appellant should be decided on the basis of evidence available on the record of the case. In the alternative, it was argued that the opinions expressed by Dr. Modi in his book are not relevant to the proved facts of the case and on the basis of hypothesis suggested by Dr. Modi in his book, no benefit of doubt should be given to the appellant. It was argued that, in fact, the three doctors who had performed autopsy on the dead body of the deceased did not find particles of carbon monoxide in the trachea of the deceased at all after dissection of the body and if particles had been found, it would have been so mentioned in the findings recorded in the post-mortem notes and, therefore, it is wrong to contend that as there is no reference to carbon monoxide in the trachea of the deceased while preparing post-mortem notes, the same should be treated as incomplete or not inspiring confidence of the court. It was argued that inquest was prepared by non-medical persons whereas presence of contusion or lacerated wounds was required to be ascertained by the doctors who performed autopsy on the dead body of the deceased and therefore it is wrong to contend that the findings recorded in the post-mortem

notes and inquest report do not tally with each other or are in conflict with each other. The learned counsel for the State pleaded that after performing detailed autopsy on the dead body of the deceased, the doctor has given opinion that the deceased died because of Asphyxia resulting from strangulation and, therefore, this court would not be justified in substituting the same by holding that burns found on the dead body of the deceased were ante-mortem, on the basis of hypothesis suggested by Dr. Modi in his book. It was asserted that Dr. Charel has not mentioned in his testimony before the court that as the heat applied to the dead body of the deceased was very great, cracks and fissures resembling incised or lacerated wounds were found but the doctor has given a firm and specific opinion that incised wounds and lacerated wounds found on the dead body of the deceased were ante-mortem as a result of which, the hypothesis suggested by Dr. Modi on which the learned counsel of the appellant has relied upon, is of little assistance to the appellant. It was maintained by the learned APP for the State that the post-mortem report of the deceased is complete in all respects and, therefore, should not be disregarded by the court on the grounds suggested by the learned counsel of the appellant. It was argued that the testimony of witness Prembai read with that of witness Mohanlal, witness Taradevi and witness Lalchand establishes the case of the prosecution against the appellant beyond pale of doubt and, therefore, the impugned judgment should be upheld. It was pointed out to the court that the Trial Court has recorded cogent and convincing reasons for convicting the appellant under Sections 302 and 201 I.P.C. and as the learned counsel of the appellant has failed to dislodge them, instant appeal should be dismissed.

9. This court has heard Mr. B.M. Mangukiya, learned advocate of the appellant as well as Mr. K.C. Shah, learned APP for the State at length and in great detail. This court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

10. The main point to be decided in instant appeal is whether deceased Rekhaben died a homicidal death or a suicidal death. In order to determine this question, it would be relevant to refer to testimony of Dr. Chimanbhai B. Charel, examined by the prosecution as p.w.1 at Exh.16, in detail. His evidence shows that at the relevant time, he was discharging duties as Medical Officer of Community Health Centre at Fatehpura.

According to him, he received dead body of the deceased on July 11, 1995 at 3.30 p.m. through Police Constable Rangjibhai Dhulabhai. It is mentioned by the witness that the police constable had also brought inquest report and post-mortem form with him. The witness has informed the court that autopsy on the dead body was performed on July 12, 1995 between 8.30 a.m. and 11.30 a.m. and that it was performed by a panel of doctors comprising himself, Dr. M.C. Bhedi and Dr. Mrs. S.M. Palas. According to the Medical Officer, the age of the deceased was about 19 years and clothes put on by her were more than 80% burnt. The witness has mentioned that the clothes found on the dead body of the deceased included (1) red-coloured blouse, (2) brown-coloured underwear which was impacted with stool and (3) red-coloured petticoat. The doctor has also mentioned that the hair on the anterior head of the deceased was found to be burnt while on posterior side, they were found to be partially burnt. According to the doctor, it was noticed by him and his colleagues that the tongue of the deceased was congested and was protruding and it was also clenched between the jaw. The Medical Officer has stated before the court that the rigor mortis was present partially in the dead body which was more prominent on head, neck and upper limb whereas the abdomen was moderately distended. The Medical Officer has further mentioned that the dead body was moderately swollen whereas the eyebrows and eyelids were burnt and eyes were found to be closed and bloody discharge was found to be present in the nostrils and mouth. The doctor has further stated in his testimony that the whole skin of the body was burnt by 2 to 3 degrees except lower limb below the knee on both sides. According to the doctor, the vagina including labia Majora and Minora were moderately oedematous whereas blackening was found on the whole part. It is also mentioned by the doctor that right upper limb was found to be burnt and raised as well as flexed at elbow whereas the fingers were found to be flexed at metacarpophalangeal joint and left upper limb was totally burnt whereas arm was found to be raised and wrist dropped. The Medical Officer has, thereafter, enumerated external injuries which were noticed on the dead body of the deceased. They are as under:

(1) The skin of the whole body burnt by 2 to 3 degree except below the knee on both side.
(2) Round circumscribed contusion (bluish) on abdomen at the level of umbilicus of 62 x 2 cm in size
(3) CLW on left shoulder 3 x 3 x Muscle deep

(4) CLW on left Axilla 8 x 4.5 cm x subcutaneous deep

(5) Three circumscribed bluish contusions on left arm at upper part of 27 x 2.5 cm of each

(6) Patchy contusions all over the body, more on the upper part of the chest (Anteriorly), right thigh, right forearm

(7) The part in front of neck congested.

10.1 After narrating abovereferredto injuries, the doctor has asserted before the court that the whole of injuries were ante-mortem except no.1 which was post-mortem burns. During the internal examination of the dead body, it was found by the Medical Officer that the lower forehead, more towards the right side, was congested with few clotted clots (blood) whereas meninges was congested. According to the doctor, the wall of the anterior chest was congested with some clotted blood around the congestion. The doctor has further mentioned that lungs were found to be congested whereas the larynx, trachea were congested and were containing frothy mucous markedly with haemorrhagic patches in the surface on cut section showing exuding dark fluid blood. It is further mentioned by the Medical Officer that pericardium was found to be normal externally but the right side of the heart was full of dark fluid blood while left side was empty. Further, as per the doctor, peritoneum was patchy as well as partially congested and there was also congestion in neck. The doctor has mentioned that the stomach was full of undigested food like bread (rotli) and rice whereas small and large intestines were found to be oedematous. What is relevant to notice is that the doctor has mentioned assertively and categorically in his testimony before the court that as far as internal finding of neck is concerned, on dissection, the skin, subcutaneous tissue and platysma muscle were congested at the level of thyroid cartilage in front of neck and in addition both these sternocleidomastoid muscles were congested and there was a fracture of greater horn of thyroid cartilage on left side whereas the upper part of trachea and larynx were congested. After describing the injuries which were noticed on the dead body of the deceased, it is firmly expressed by the doctor that the death of the deceased was Asphyxia due to strangulation.

10.2 In his cross-examination, the doctor has stated that after receiving the dead body of the deceased at 3.15 p.m., it was kept in the morgue. It is mentioned by Dr. Charel that Dr. M.S. Bhedi is also a Medical Officer discharging duties at Fatehpura and that on July

11, 1995, Dr. Bhedi was on leave whereas Dr. Mrs. Palas was requested to remain present on July 12, 1995 by addressing a 'yadi' within 11/2 hours of receipt of the dead body on July 11, 1995. The doctor has admitted that according to the panch witnesses and police opinion, the cause of death of the deceased was due to burns. During his cross-examination, the Medical Officer informed the court that Dr. Motisinh was also doing private practice whereas Dr. Mahesh Agrawal was serving in Community Health Centre, Jhalod which is at a distance of 25 km from Fatehpura. According to the doctor, village Sukhsar is 20 km from Fatehpura and that he had read the inquest report before performing autopsy on the dead body of the deceased. The doctor has mentioned that in one hand of the deceased, there were 11 glass bangles whereas in another, there were 8 glass bangles. The doctor has further informed the court that before performing autopsy on the dead body of the deceased, he had conducted post-mortem examination on 4 to 5 other dead bodies. The suggestion made by the defence that a person sought to be strangulated would hit legs on floor and, therefore, would receive injury on heel, was not accepted by him. The doctor has admitted that part of the dead body of the deceased was burnt whereas rest of the part was not burnt. It is also admitted by him that which part was burnt and which part was not burnt was not mentioned in the post-mortem notes. It was admitted by him that he was required to assign reasons for coming to the conclusion that burns received by the deceased were post-mortem. The suggestion made by the defence that there would be zone of redness if skin is completely burnt was denied by him. It was admitted by the doctor that during the course of post-mortem examination of the deceased, blood was found. The suggestion made by the defence that if carbon monoxide mixes with haemoglobin, the respiration will cease was accepted by the Doctor. The Doctor also admitted that once respiration ceases, lungs, heart, meninges, windpipe etc. would be found congested. The doctor further admitted that once breathing ceases, death would occur within five minutes. However, the suggestion made by the defence that lungs and windpipe should have been sent to Forensic Science Laboratory in order to ascertain presence of carbon monoxide was emphatically denied by him and it was informed by him that only in cases of doubt, the same would be sent to Forensic Science Laboratory. It is also admitted by the Doctor that death by burns can be inferred from the presence of carbon particles. According to the doctor, after post-mortem examination was over, the dead body was handed over to police and that at the time of post-mortem examination, about 500 to

600 persons had collected near the building where post-mortem examination was performed. The suggestion made by the defence that before starting post-mortem examination, the doctors had received a call from Minister was emphatically denied by him. So also, the suggestion made by the defence that those who had collected near the room, where post-mortem examination was to be conducted, were about to assault the doctors was also denied by him. The case of the defence that the crowd which had collected near the room where post-mortem examination was conducted had pelted stones was also denied by him. It was admitted by the doctor that in the crowd, Advocate Mr. Upadhyay was present. However, the suggestion made by the defence that Dr. Motisinh and Dr. Mahesh Agrawal were also members of the crowd was emphatically denied by him. Further, the defence case that after post-mortem examination, copy of the report was handed over to Advocate Upadhyay was also denied by him. The suggestion made by the defence that pressure was exerted on him to mention in the post-mortem notes that the deceased died because of Asphyxia due to strangulation was emphatically denied by him. The suggestion made by the defence that intentionally autopsy on the dead body of the deceased was not performed on July 11, 1995 was also denied by him. During his cross-examination, it was stated by the doctor that he himself had not prepared any notes while performing autopsy on the dead body of the deceased but the other two doctors who were with him had prepared such notes.

10.3 In cross-examination by original accused nos.2 to 5, it is mentioned by the doctor that the clothes as mentioned in column no.7 of the post-mortem notes were found on the dead body of the deceased when the dead body was brought before him. According to him, bangles found on the hands of the deceased were removed by the sweeper at his instance. It was admitted by the doctor that in order to indicate the fact whether the deceased had resisted at the time of death, it was necessary to refer to presence of clothes and ornaments put on by the deceased in the post-mortem notes. It was also admitted by him that if a person is killed after gagging his mouth, the tongue would not be found protruding. It was also admitted by him that if a person receives 45% to 50% burns, such burns would be sufficient to cause death. It was mentioned by the doctor that if a person receives Second degree burns, blisters would be found. It was also admitted by him that if a person receives 2 to 3 degree burns, liquid would ooze from skin. Lastly, it is stated by the doctor that whether a person was alive at the time when he was set on fire can be said from the

presence of blisters.

11. This is all what transpires from the testimony of Dr. Charel.

12. A fair and reasonable reading of the testimony of Dr. Charel makes it evident that a thorough examination of the dead body of the deceased was made by a panel of three doctors before expressing firm opinion that cause of death was Asphyxia due to strangulation. A medical evidence witness, who performs a post-mortem examination, is a witness of fact though he also gives an opinion on certain aspects of the case. The value of medical witness is not merely a check upon the testimony of other witnesses, it is also independent testimony because it establishes certain facts quite apart from other oral evidence. Therefore, the testimony of Dr. Charel cannot be brushed aside by this court, as is sought to be suggested by the learned counsel of the appellant. An attempt was made to discredit the doctor by pointing out certain passages from Modi's Medical Jurisprudence and Toxicology Twenty-Second Edition. However, the Supreme Court, time and again, has warned that where the opinions of authors were neither shown to have been given in regard to circumstances exactly similar to those in the particular case before the court nor were they put to the medical witness it is not a satisfactory way of disposing of the evidence of the witness to discredit it on the ground that the doctor was a comparatively inexperienced man and his statement did not accord with the opinions expressed in the books. Therefore passages relied upon by the learned counsel of the appellant from the abovementioned book cannot be taken into consideration because it is not suggested by the learned counsel that the opinions of author were given in regard to circumstances exactly similar to those found in instant case by Dr. Charel and Dr. Charel was never confronted with those passages. A reasonable reading of the testimony of Dr. Charel makes it evident that the panel of three doctors had conducted post-mortem examination thoroughly and with care. If particles of carbon monoxide had been found in trachea, the doctors would not have failed to mention the said fact in the post-mortem notes. However, merely because absence of particles of carbon monoxide is not mentioned in the post-mortem notes, one need not jump to the conclusion that there were particles of carbon monoxide in the trachea and were not noticed by the doctors. One of the major tests to find out whether death is due to strangulation or not is that in case of strangulation, the right side of the heart would normally be found with full of dark blood

whereas the left side would be found empty. In this case, Dr. Charel has categorically asserted that the right side of the heart of the deceased was full of dark blood whereas the left side was empty. Further, it could not be suggested to the doctor that fracture of greater horn of thyroid cartilage on left side, noticed at the time of performing autopsy on the dead body of the deceased, was the result of burns. The doctor has, in terms, maintained before the court that the external injuries mentioned in his testimony before the court as well as column no.17 of the post-mortem notes were ante-mortem except injury no.1 which was post-mortem burns. The plea that the doctors were pressurised to mention in the post-mortem notes that cause of death of the deceased was strangulation by the crowd which had collected outside the room where the post-mortem was conducted as well as by Advocate Upadhyay and therefore post-mortem notes should be ignored is merely stated to be rejected. As noticed earlier, those suggestions made have been emphatically denied by the doctor. It is well-settled that suggestions, if denied, cannot take the place of evidence. Further, it is not probable that all the three doctors would be coerced to state a particular cause of death of the deceased. The plea that the dead body was received on July 11, 1995 but post-mortem examination was conducted on July 12, 1995 regarding which no explanation is offered and, therefore, opinion about the cause of death mentioned in the post-mortem notes should be ignored is also merely stated to be rejected. A fair reading of testimony of Dr. Charel makes it evident that it was decided that the post-mortem examination of the dead body of the deceased should be conducted by a panel of three doctors. His evidence establishes that on July 11, 1995, Dr. Bhedi was on leave whereas Dr. Palas was requested to be present at the time of post-mortem examination of the deceased on July 12, 1995 by addressing a yadi on July 11, 1995. Therefore, it is wrong to suggest that with an oblique motive, post-mortem examination of the dead body of the deceased was postponed to next day of receipt of dead body. The plea that post-mortem notes are not signed by Dr. Palas and, therefore, should not inspire confidence of the court, is devoid of merits. In order to ascertain this aspect of the matter, this court had looked to the papers which were supplied to the appellant while submitting report under Section 173 of the Code of Criminal Procedure. One of the papers supplied to the appellant is certificate indicating cause of death of the deceased. It is signed by all the three doctors. As the appellant knew very well that all the three doctors had participated in the post-mortem examination of the

deceased and that an unanimous opinion about the cause of death of the deceased was expressed by the three doctors, no question was put to Dr. Charel indicating that the third doctor Dr. Mrs. Palas had expressed a dissenting opinion. On the facts and in the circumstances of the case, this court finds that the medical evidence adduced by Dr. Charel read with contents of the post-mortem notes conclusively establishes that deceased Rekhaben was strangulated to death and had not committed suicide, as is suggested by the learned counsel of the appellant. The finding of the learned Judge of the Trial Court on this count is found to be eminently just and is hereby upheld.

13. Having found that the deceased was strangulated to death, it would be relevant to deal with Miscellaneous Criminal Application No.11927 of 2004 filed by the appellant wherein prayer to recall the doctor for further examination is made. Rule 50 of the Gujarat High Court Rules, 1993 inter alia provides that the provision of law under which an application is made shall be stated prominently on the top of memorandum of the application at the time of its presentation. The applicant has mentioned that instant application is filed under Section 389 of the Code of Criminal Procedure. The learned counsel of the appellant could not satisfy this court as to how such an application containing prayer, referred to above, is maintainable under Section 389 of the Code of Criminal Procedure, 1973. In fact, by making prayer to recall Dr. Charel and record his further evidence, what is sought to be achieved by the appellant is to lead additional evidence within the meaning of Section 391 of the Code of Criminal Procedure, 1973. The manifest object of Section 391 is the prevention of a guilty man's escape through some careless or ignorant proceedings of a Trial Court or the vindication of an innocent person wrongly accused where the Trial Court, through some carelessness or ignorance, has omitted to record the evidence of the circumstances essential to the elucidation of truth. Being an exception to the general rule, the powers under it must always be exercised with circumspection. If there is apprehension of justice failing by erroneous acquittal or by erroneous conviction, the court would be justified in exercising its discretion in calling for additional evidence. However, it needs no emphasis that one who approaches the court with a prayer to permit him to lead additional evidence must approach the court with clean hands and good intentions. It may be stated that the hearing of the appeal had begun on December 18, 2004, which was a working Saturday. However, the learned counsel of the

appellant had started addressing the court on December 20, 2004. On that day, he had almost completed his arguments but sought time in the matter to enable him to quote certain passages from medical books on the ground that his medical books were taken by his doctor friend for reference. Under the circumstances, though his arguments had almost concluded, the matter was adjourned to next day to enable him to refer to certain books. The matter was never adjourned to enable the applicant to move an application under Section 391 of the Code of Criminal Procedure, 1973. During the course of hearing of the instant appeal and the application, the learned APP has produced jail-remarks sheet of the prisoner which indicates that the prisoner was granted temporary bail by the High Court on February 5, 1999 to enable him to take treatment from the doctor of his choice for his own ailment but he is absconding since then, though he was required to surrender to the authority on February 17, 1999. The provisions of the Gujarat High Court Rules, 1993 require that such an application must be supported by affidavit. The instant application is not supported by affidavit of the applicant. In order to persuade the court to dispense with the affidavit, the applicant has made a statement in paragraph 6(C) of the application as under: "Be pleased to dispense with the affidavit as the applicant is in jail". From the contents of jail-remarks sheet, it is evident that the prisoner is absconding since February 17, 1999 and granted relief of temporary bail to himself without caring for the direction of the High Court and made a false statement that he is in jail. One who plays smart with the court and attempts to mislead the court is not entitled to any discretionary relief contemplated by Section 391 of the Code of Criminal Procedure, 1973. Even otherwise, more than sufficient opportunity was afforded to the applicant to cross-examine Dr. Charel. His cross-examination indicates that he was examined at length and in detail and on all relevant aspects of the matter. It is well-settled that though an Appellate Court has powers to admit additional evidence in a suitable case, yet the discretion should not be exercised to fill up gaps or lacuna in the defence. If the defence was serious about this matter, there was no reason why the Doctor was not cross-examined on the points which are sought to be emphasised before this court from the passages of Dr. Modi's Medical Jurisprudence and Toxicology. The defence has accepted the answers given by Dr. Charel in his cross-examination and left it at that. The application is filed with an intention to derail the hearing of the appeal and cause delay in the disposal of an old case. On the facts and in the circumstances of the case,

instant application cannot be entertained and is liable to be rejected.

14. The net result of the above discussion is that it is proved beyond reasonable doubt that the deceased died because of Asphyxia due to strangulation and the defence has failed to probabilise its case that the deceased died a suicidal death.

15. It is relevant to notice that the prosecution has not claimed that the incident in question was witnessed by any one and no direct evidence regarding the incident is tendered before the Court. Admittedly, the whole case against the appellant rests on circumstantial evidence. The law relating to circumstantial evidence is well settled. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis, but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is, or, are, not decisive. Where a case rests squarely on circumstantial evidence, the various sets of circumstantial evidence should be taken into consideration and their total effect should be such that they must lead unerringly to the guilt of the accused. Each fact must be proved individually and only thereafter the sum total of the proved facts has to be taken into consideration, but this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, however, extravagant and fanciful it might be. In SHARAD vs. STATE OF MAHARASHTRA, AIR 1984 SC 1622, after referring to earlier case-laws, the Supreme Court has summarised the conditions to be fulfilled in a case based on

circumstantial evidence as under:-
(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may' be established; (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (iii) the circumstances should be of a conclusive nature and tendency; (iv) they should exclude every possible hypothesis except the one to be proved; (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused; and (vi) where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. If the aforesaid various conditions are fulfilled, only then a Court can use a false explanation or a false defence as an additional link and not otherwise. As observed earlier, if the circumstances proved are consistent either with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts, called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way. It has to consider the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not and in dealing with this aspect of the problem, the doctrine of benefit of doubt does not apply. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, to human conduct and their relations to the facts of the particular case.

16. In the light of abovereferredto principles, the court will have to consider the question whether the case against the appellant is proved or not. As observed earlier, it is proved by the prosecution satisfactorily and beyond pale of doubt that the deceased died a homicidal death. However, the testimony of witness Pramodsinh F. Gohil, examined by the prosecution as

p.w.9 at Exh.35, shows that on July 11, 1995, he was in charge of Fatehpura Police Station and at about 10.45 a.m., the appellant had come to the police station and given information regarding accidental death of his wife i.e. deceased Rekhaben. The testimony of Mr. Gohil shows that the information disclosed by the appellant was recorded as Accidental Death No.6 of 1995 under Section 174 of the Code of Criminal Procedure, 1973 and that as this was a visitable offence, S.D.P.O. Lunawada was informed about the same by wireless message. Mr. Gohil has produced on record, the information given by the appellant regarding accidental death of his wife, at Exh.36. In Exh.36, it is stated by the appellant that his marriage with the deceased had taken place on April 27, 1995 and that after marriage, his wife had gone to her parental house from where she was brought to her marital house after a week. It is further mentioned by the appellant in the said information that 15 days prior to July 11, 1995, the deceased had expressed her desire to stay separate from his parents and brother but he had declined to accept the said suggestion as a result of which, his wife had told him that she would go to her parental house. The appellant has further stated in the said information that he had informed his wife that a letter was received from her uncle on July 10, 1995 indicating that her uncle was to come to Fatehpura after 15 days and that she should go to her parental house with her uncle and that his suggestion was accepted by his wife. What is mentioned in the information is that on the day of incident i.e. July 11, 1995, his wife had got up at about 5.00 a.m. and was preparing tiffin for him whereas his parents were brushing their teeth on the 'otla' of the house and he had got up at about 5.45 a.m.. The appellant has further mentioned that thereafter he had visited toilet and when he was washing his hands, he had found that smoke was coming out from the bathroom as a result of which, he had broken the grill of the bathroom and found that his wife was lying on the floor in a burnt condition. It is also stated by the witness that thereupon, he had raised shouts as a result of which, his parents and brother had come to the place and after opening the door of the bathroom, they had found that the deceased was lying dead in the bathroom in a burnt condition. The appellant has mentioned in his information that as he had declined to accept the suggestion made by the deceased to stay separate from his parents, the deceased had committed suicide by pouring kerosene over herself.

17. A fair reading of the testimony of Mr. Gohil with the contents of information conveyed by the

appellant makes it very clear that the deceased had accepted his suggestion that she would go to her parental house in the company of her uncle who was to visit village Fatehpura after 15 days. In fact, there was no earthly reason for her to commit suicide at all. In the information conveyed by the appellant, it is mentioned that the deceased had taken meals at about 10.00 p.m. on July 10, 1995. The findings recorded in the post-mortem notes would show that at the time of post-mortem examination, undigested bread (rotli) and rice were found which means that, in all probability, she must have been done to death immediately after taking meals. However, even if what is mentioned in the information disclosed by the appellant before witness Gohil is taken at its face value, the deceased had committed suicide at 5.30 a.m. but the information about the incident was disclosed by the appellant before witness Gohil at 10.45 a.m. on July 11, 1995. It is relevant to mention that the incident in question had taken place in town Fatehpura whereas the police station is also situated in the same town. No explanation is offered by the appellant as to why enormous delay was caused by him in informing the police about the so-called suicidal death of his wife. In the information conveyed by the appellant before witness Mr. Gohil, it is mentioned that the bathroom was closed from inside when the deceased was found lying on the floor of the bathroom in a burnt condition. However, the panchnama of place of occurrence makes it evident that it was not possible to close the bathroom from inside. Thus, a false information regarding death of the deceased was conveyed by the appellant before the police though she was strangulated to death. This strong circumstance is not explained by the appellant at all.

18. As observed earlier, though the incident had taken place even according to the appellant at 5.30 a.m. on July 11, 1995, for the first time information was given to the police at 10.45 a.m. After finding that the deceased was lying on the floor of the bathroom in a burnt condition, no other person was informed about the incident at all nor the doctor was summoned to treat the deceased nor the deceased was removed to the doctor for treatment but the appellant had maintained a tacit silence. This conduct of the appellant after the incident is extremely strange and not consistent with his innocence or with his defence that the deceased had committed suicide.

19. What is important to note is that as per the contents of panchnama, a stand at the height of 5 feet for hanging clothes was found where a petticoat and a

sari having design of green-blue colour were found and though the flames of the fire had touched the ceiling of the bathroom, those clothes were found to be intact. If the deceased had committed suicide, her petticoat and sari must have been burnt and would not have been found intact. This shows that after the deceased was done to death, the petticoat and sari were placed on the stand to show to others that the deceased had committed suicide.

20. Further, as per the post-mortem notes, the whole skin of the body was burnt by 2 to 3 degrees except lower limb below the knee on both sides. If a person commits suicide in the bathroom having size 5 ft. x 4 ft., the whole body would be found burnt and lower limbs below the knee on both side would not remain intact at all. Further, as mentioned in the post-mortem notes, the hair on the anterior head were found burnt while on posterior head, they were found to be partially burnt. If a lady commits suicide by pouring kerosene over herself and sets herself ablaze, then the hair on the anterior and posterior head would be totally burnt. This circumstance also shows that the deceased had not committed suicide.

21. At this stage, it would be relevant to notice the testimony of witness Kailasben Udesinh, examined by the prosecution as p.w.8 at Exh.34. Her testimony shows that she is neighbour of the appellant and her house is situated behind the house of the appellant. According to this witness, on the previous day, she had gone to bed at about 9.00 p.m. after taking meals and had got up at about 6.00 a.m. in the morning of the next day. It is mentioned by her that the appellant had raised shouts that Rekha had burnt herself. According to her, after marriage, quarrels were taking place in the house of the appellant and that she was able to hear the quarrels. It is also mentioned by the witness that a day prior to the day of the incident, the deceased was sitting under a tree and that she was not knowing as to how the deceased had died. In cross-examination, she has stated that father of the appellant had filed a suit against her husband and Panchayat alleging that he had extracted electric supply illegally. However, the suggestion made by the defence that because of filing of the suit, she was deposing falsely against the appellant, is emphatically denied by her. It is common knowledge that if a person commits suicide by pouring kerosene over himself and sets himself ablaze, within no time, he would shout for help. But the testimony of witness Kailasben does not indicate that any shouts were raised by the deceased at all, though she was able to hear the shout raised by the appellant that the deceased had died by

burning herself and that she was hearing quarrels which were taking place in the house of the appellant after his marriage with the deceased. Thus, there is no manner of doubt that the appellant had, first of all, strangulated the deceased to death and thereafter, set her body on fire to cause disappearance of evidence of murder.

22. The testimony of the witnesses examined in this case read with contents of the information conveyed by the appellant himself to witness Mr. Gohil would indicate that the appellant was present in the house with the deceased all throughout. Though his parents and brother were present in the house, they had no reason or motive to commit murder of the deceased. The appellant, who was husband of the deceased, had all opportunity to commit the crime in question.

23. The discussion of the evidence on record unerringly shows that the circumstances which are sought to be pressed into service against the appellant are clearly established by the prosecution and the combined effect of proved circumstances is such that they do not exclude the possibility of innocence of the appellant. The conclusion drawn by this court from the proved facts are consistent only with one fact that within all human probability, the murder of the deceased was committed by the appellant. The circumstances proved are of a conclusive nature and tendency. The chain of circumstances is complete and does not afford any reasonable ground for a conclusion, consistent with innocence of the appellant. On consideration of total cumulative effect of all the proved facts, this court is satisfied that in all human probability, the act of causing death of deceased Rekhaben must have been done by the appellant. This court further notices that in his further statement recorded under Section 313 of the Code of Criminal Procedure, 1973, the appellant has stated that his wife had committed suicide and that he was falsely implicated in the case by village people and Advocate Upadhyay, who was a politician. This court notices that the Supreme Court, in a catena of decisions, while explaining the law relating to circumstantial evidence has, ruled that where circumstances proved are put to the accused through his examination under Section 313 of the Code of Criminal Procedure and the accused merely denies the same or gives false replies, then such denial or giving of false reply would be an additional link in the chain of circumstances to bring home the charge against the accused. Here, in this case, the incriminating circumstances proved were put to the appellant and in his further statement recorded under

Section 313, he has merely denied most of the circumstances and at the fag end of his statement, stated that a false case was registered against him at the instance of an Advocate named Upadhyay who was a politician. No evidence could be adduced by the appellant to establish his claim that advocate Upadhyay was a politician and that a false case was registered against him at the instance of Mr. Upadhyay. It may be stated that the deceased belonged to a poor family. Neither her mother nor her brother nor herself had any important status in the society. It is, therefore, not probable that anyone would cook up a false case against the appellant. The defence taken is totally false. Thus, the answers given by the appellant in his examination under Section 313 will have to be treated as completing chain of circumstances established against him.

24. The net result of above discussion is that the finding recorded by the learned Judge of the Trial Court that the appellant is guilty under Section 302 I.P.C. and Section 201 I.P.C. cannot be regarded as erroneous and no ground is made out by the learned counsel of the appellant to interfere with the same in instant appeal. The appeal is, therefore, liable to be dismissed.

25. For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of direction given by the learned Judge of the Trial Court in the impugned judgment.

Miscellaneous Criminal Application No.11927 of 2004 also fails and is dismissed. Rule issued therein is discharged.

(J.M. Panchal, J.)

(M.C. Patel, J.)

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